IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITION
SECOND APPEAL NO.757 OF 2003

Shri Dnyaneshwar Gajaba
alias Gajanan Kadekar .. Appellant
Versus
1. Shri Raghu Rambhau Limbore
(since deceased by his legal heirs)
A) Ankush Raghu Limbore
B) Hiraram Raghu Limbore
(since deceased by his legal heirs)
a) Smt. Kantabai Hiraman Limbore
b) Kum. Vishal Hiraman Limbore
c) Kum. Nani Hiraman Limbore
C) Kausabai Dagdu Ghate
D) Alka Vijay Bhase
2. Shri Mahadu Rambhau Limbore
3. Shri Vasant Gajaba Kadekar
4. Smt. Hirabai Gajaba Kadekar..Respondents

Mr. P.S. Dani for Appellant
Mr. Sachin Chavan i/b. S.S. Kulkarni for the Respondents

CORAM : S.R.SATHE,J.
DATED : 18/07/2007

ORAL JUDGEMENT :-

1. By consent heard finally at admission stage.

2. The appellant-original Plaintiff in Regular Civil Suit No.238 of 1988 has preferred this appeal

against the judgement and order passed by the Court of 4th Additional District Judge, Pune in Civil Appeal No.70 of 1998 whereby the order passed by the Civil Judge Junior Division dismissing the Plaintiff's suit was confirmed and appeal was dismissed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

3. The brief facts giving rise to this appeal are as under :-

The defendant No.3 is the real brother of Plaintiff. The defendant No.4 is their mother. Father of Plaintiff and defendant No.3 Gajaba alias Gajanan purchased the suit land bearing Block No.116 situated at village Ashkhed Khurd, Taluka Khed on 14/06/1968. Plaintiff's father Gajaba died in the year 1969. According to Plaintiff, after his death he and defendant Nos.3 and 4 started cultivating the suit land. The defendant Nos. 1 and 2, who are residents of Khed with a view to grab the suit land got executed the Sale Deed of the suit land from defendant No.4 on 20/10/1978 by showing falsely in the said deed that they had advanced money to defendant No.4 from time to time. It is Plaintiff's case that after the death of his father, 2-3 years thereafter, the defendant No.4

left her minor sons i.e. Plaintiff and defendant No.3 and started residing with one other person. She had in fact no right to sell the suit property in which minors namely, Plaintiff and defendant No.3 had share in the same. However, by joining hands with the defendant Nos.1 and 2 she executed the Sale Deed. Thus, according to Plaintiff, the said sale deed is not binding on the Plaintiff. He, therefore, filed the suit for declaration on 13/10/1988 that the sale deed executed by defendant No.4 on 20/10/1978 is void and prayed for the possession of the suit land from defendant Nos. 1 and 2. Plaintiff afterwards amended the plaint and alleged that the Sale Deed executed by Plaintiff was not binding on the share of minors namely Plaintiff and defendant No.3. He, therefore, prayed that the suit land be partitioned and share of Plaintiff and defendant No.3 to the extent of 2/3 be given to them.

4. The defendant No.1 and 2 filed their Written Statement at Exh-16 and opposed the suit claim. They contended that when Gajaba purchased the suit land by Sale Deed dated 14/06/1968, he had executed an agreement to reconvey the said land and accordingly, the said land has been reconveyed by defendant No.4 and the Sale Deed is legal and valid. The defendants denied

the Plaintiff's case that since the Sale Deed, Gajaba was cultivating the suit land. They also denied that the Sale Deed is without consideration. On the contrary, the defendants contended that even after the death of Gajaba, defendant No.4 being guardian of minor children executed fresh agreement and admitted to execute the Sale Deed in view of the earlier agreement to reconvey. Thus, defendant No.4 executed the Sale Deed in compliance of the said agreement to reconvey and the same was also executed for legal necessity of the joint family of Plaintiff, defendant Nos.3 and defendant No.4. The defendants, therefore, contended that the Sale Deed is binding on the Plaintiff and the suit is liable to be dismissed.

5. On these pleadings, the learned Trial Judge framed issues at Exh-20. In order to prove their respective case both the parties adduced oral and documentary evidence. After considering the entire evidence, the learned Trial Judge came to the conclusion that the Plaintiff has failed to prove that the Sale Deed executed by defendant No.4 in favour of defendant Nos. 1 and 2 was for consideration or it was obtained by fraud. He also held that the Plaintiff has failed to prove that the defendants obtained forcible

possession of the suit land. According to him, the suit was also not filed in time. Hence, on all these grounds, the learned Trial Judge dismissed the suit.

6. The Plaintiff challenged the said order by Civil Appeal but the same also came to be dismissed. Hence, Plaintiff filed present Second Appeal.

7. In this appeal before me Shri P.S. Dani, learned Advocate for the Plaintiff has urged only two points. Firstly, he submitted that Courts below have not properly appreciated the evidence on record and have wrongly held that Sale Deed executed by defendant No.4 in favour of defendant Nos. 1 and 2 is legal and valid. Secondly, he canvassed before me that when the defendant No.4 executed the Sale Deed Plaintiff had undivided 1/3rd share in the same. He was minor at that time. So, it was necessary for the defendant No.4 to obtain permission of the Court to sell the said property. As, such permission was not obtained the Sale Deed is void and against the provision of section-8 of the Hindu Minority and Guardianship Act. He, therefore, submitted that the appeal be allowed and the order passed by the Courts below be set aside and at least it should be held that Plaintiff is entitled for partition

and separate possession of his 1/3rd share. As against this, Shri S.S. Kulkarni, learned Advocate for the Respondents supported the judgement and order passed by the Courts below and submitted that both the Courts below have given concurrent finding of facts and no substantial question of law is involved in the present appeal and it be dismissed.

8. The relationship between Plaintiff and defendant Nos. 3 and 4 is not in dispute. It is also an admitted fact that Plaintiff's father Gajaba purchased the suit land in the year 1968. The evidence on record clearly indicates that the suit land was being cultivated by him. It is also not in dispute that Plaintiff's father Gajaba died some time in 1969 and at that time, Plaintiff was minor. It is an admitted fact that the defendant No.4 sold the suit property to defendant Nos. 1 and 2 by virtue of registered Sale Deed dated 20/10/1978. The question arises whether the said Sale Deed is legal and valid and whether Plaintiff is entitled to challenge the said Sale Deed in the present suit.

9. Both the Courts below have considered the entire evidence on record in its proper perspective and

have rightly observed that there is absolutely no evidence to show that the Sale Deed executed by defendant No.4 was without consideration. It must be noted that though the defendants had taken the contention that the Sale Deed was obtained by defendant Nos. 1 and 2 by brining undue pressure or by fraud, the Courts below have held that Plaintiff has failed to prove his case in that behalf. In the registered Sale Deed, there is clear mention of the consideration having received by defendant No.4. It is stated that the defendant No.4 had received certain amount to meet the family needs from time to time from defendant Nos. 1 and 2 and the said amounts were also taken into consideration while executing the Sale Deed. Taking into consideration such specific recitals in the registered Sale Deed coupled with the defendants' oral evidence the Courts below observed that the Sale Deed executed by defendant No.4 was for the consideration and it appears that after the death of Gajaba, the defendant No.4 was in need of money to meet the family needs including the expenses required for the minor children. If we see the evidence of Plaintiff and in particular his cross examination then it is very clear that Plaintiff has in fact no personal knowledge about the financial position of defendant No.4 which was

existing after the death of Gajaba. From the recitals in the Sale Deed and the oral evidence of defendant, it does appear that the Sale Deed is in fact executed for legal necessity.

10. The question arises whether the defendant No.4 was entitled to execute such Sale Deed in respect of minor's property. While considering this aspect, it must be borne in mind that the Sale Deed was in fact executed with a view to comply earlier undertaking or agreement executed by Gajaba. He had agreed to reconvey the land to defendant Nos. 1 and 2. So, with a view to keep the said promise and comply the agreement of reconveyance, the defendant No.4 has executed the Sale Deed in the year 1978. Besides this, there was also legal necessity for executing such Sale Deed. It is true that at that time, the defendant No.4 had not obtained permission of the Court to sell minor's property as required by Section-8 of Hindu Minority and Guardianship Act, 1956 but we can not ignore the fact that at the relevant time admittedly, the defendant No.4 was natural guardian of Plaintiff. There was no other adult male member in the family and defendant No.4 was responsible for the management of the joint family of Plaintiff, defendant Nos. 3 and 4. However,

if it is held that provisions of section 8 are not applicable to any undivided interest of minor in the joint family property, then it can be said that there is no need to obtain permission as contemplated by Section 8(2) of the Hindu Minority and Guardianship Act, 1956. The Sale Deed executed was in a way not totally new transaction but it was executed because of the reconveyance agreement executed by the father of Plaintiff and defendant Nos.3.

11. It is needless to say that when the property of minor is sold by minor's natural guardian and manager without permission of the Court the remedy of the minor is to file a suit for declaration within a period of 3 years of the minor attaining majority. If the minor fails to institute the suit within 3 years of attaining majority the title of alienee purchaser would be perfected. In the instant case, though Plaintiff has shown his age as 24 in the title of the suit, if we see his deposition he has clearly stated that when his father expired in 1969 he was about 7 or 8 years of age. So, in any case, when he filed the present suit he was at least 26 or 27 years of age. It obviously means that suit was not filed by him within 3 years after the time he attained the majority. Besides this, the

document in question is executed by defendant No.4 in 1978, there is absolutely nothing on record to show that the Plaintiff came to know about the said document only 3 years prior to the filling of the suit. On the contrary, the evidence on record goes to show that Plaintiff had come to know about the defendant No.4 executing the Sale Deed in favour of defendant Nos. 1 and 2 long back. So, the suit for obtaining declaration regarding the Sale Deed in question is also not filed within time. So, even if we take into consideration the provisions of article 59 or 60 of the Limitation Act, it is clear that present suit is barred by Law of Limitation.

12. There is another aspect of the matter. Admittedly, defendant No.3 is Plaintiff's elder brother. So, when Plaintiff, defendant No.3 and defendant No.4 were having a joint family, it was the case of Plaintiff that the alienation made by his mother with regard to minor's undivided interest in the property was illegal. It was necessary for elder brother to file a suit for declaration within 3 years from the time when he attained the majority but, that was not done. So, even as per the provisions of section-7 of the Limitation Act, the present suit is

not maintainable. Said section says :-

> *"Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased"*

Both the Courts below have rightly held that the suit is barred by law of limitation.

13. Thus, having regard to all the facts, circumstances and evidence on record and considering the position of law I am of the view that there is no substance in the present appeal. Hence, I pass the following order :

O R D E R

The appeal is dismissed with costs.

(S.R. SATHE,J.)